case, it will be apparent, we think, from an examinatian of the authorities cited by the court and those in this note, that it is correct both upon principle and authority.

M. D. EWELL.

Chicago.

Snpreme Court of Arkansas.

STATE *v.* GRIGSBY ET UX.

Parents are intrusted with the custody of their children on the presumption that the latter will be properly taken care of, and when it is found that the parents are guilty of gross neglect, cruelty or conduct injurious to the morals or interests of the children a court of chancery will interfere and appoint a suitable guardian.

This jurisdiction of the courts of chancery is not taken away by a like power conferred by statute on the probate courts.

The better practice is to bring the bill in the name of the infant by its next friend, but such bill ought not to be dismissed because brought in the name of the state.

APPEAL from Scott Circuit Court in Chancery.

This was a bill in equity in the name of the State against James Grigsby and Emma, his wife, alleging in substance that the defendant James, being the father of a child now about six years of age, intermarried with the defendant Emma: that defendants were able to properly provide for the child but that the defendant Emma, with the consent of the defendant James, subjected it to cruel and inhuman treatment, inflicting excessive chastisement, depriving it of food and drink, and in various ways, specifically set forth in the bill, torturing it to such an extent as to endanger its life; that several persons had offered to give it a comfortable home but that defendants refused to allow them to do so. The bill prayed that a guardian might be appointed, and that pending the suit defendants might be compelled to deliver the child to some suitable person. The court below appointed a custodian of the child and enjoined defendants from interference with his possession. At the next term defendant demurred to the bill on the grounds, 1st, of defect of parties: 2d, of want of jurisdiction, and, 3d, that the statements of the bill were not sufficient to constitute a cause of action. The court sustained the demurrer and dismissed the bill. Plaintiff appealed.

Clendenning & Sandels, for the State.

The opinion of the court was delivered by

ENGLISH, C. J.—The jurisdiction of the court of chancery

extends to the care of the person of the infant, so far as necessary for his protection and education, and as to the care of the property of the infant, for its due management and preservation and proper application for his maintenance. It is upon the former ground, principally, that is to say, for the due protection and education of the infant, that the court interferes with the ordinary rights of parents, as guardians by nature, or by nurture, in regard to the custody and care of their children. For, although, in general, parents are intrusted with the custody of the persons, and the education of their children, yet this is done upon the natural presumption that the children will be properly taken care of, and will be brought up with a due education in literature, morals and religion, and that they will be treated with kindness and affection. But whenever this presumption is removed: whenever (for example) it is found that a father is guilty of gross ill-treatment or cruelty towards his infant children, or that he is in constant habits of drunkenness and blasphemy, or low and gross debauchery, or that he professes atheistical or irreligious principles, or that his domestic associations are such as tend to the corruption and contamination of his children, or that he otherwise acts in a manner injurious to the morals or interests of his children—in every such case, the court of chancery will interfere, and deprive him of the custody of his children, and appoint a suitable person to act as guardian, and to take care of them and superintend their education. But it is only in cases of gross misconduct that parents' rights are interfered with: 2 Story's Eq. Juris., 20th ed., sect. 1341.

The jurisdiction thus asserted, to remove infant children from the custody of their parents, and to superintend their education and maintenance, is admitted to be of extreme delicacy, and of no inconsiderable embarrassment and responsibility. But it is nevertheless a jurisdiction which seems indispensable to the sound morals, the good order, and the just protection of a civilized society. On a recent occasion, after it had been acted upon for one hundred and fifty years, it was attempted to be brought into question, and was resisted, as unfounded in the true principles of English jurisprudence. It was, however, confirmed by the House of Lords, with entire unanimity, and on that occasion was sustained by a weight of authority and reasoning rarely equalled: Id., sect. 1342, and note.

The jurisdiction of chancery to appoint a guardian, and if neces-

sary for that purpose, to interfere between a father and his children, is undoubted, and has been settled by the highest authority in England, and by many cases in this country. Thus, where the habits and mode of life of the father, or his treatment of his child, are such as to affect injuriously the child's health or morals, or endanger his property, the custody will be committed to a person to act as guardian. Bispham's Equity, 486 and note.

The general theory upon which chancery assumes jurisdiction over the persons and estates of minors is, that, by proper proceedings, the infant has been constituted a ward of court. Id. 484.

As to the manner in which a minor may be appointed a ward of court, it is not necessary that there should be any suit actually pending or bill filed; the object may be attained by petition: Id. 485.

In England the prerogative of the crown as *parens patriæ* is exercised by the court of chancery. In this country the State takes the place of the King, and protects infants through chancery: Id. 483.

In *Cowls* v. *Cowls*, 3 Gilman (Ill.) 435, it was held that a court of chancery is vested with a broad and comprehensive jurisdiction over the persons and property of infants, and their parents who are bound for their protection and maintenance, and will take such action in relation to the charge of their persons, or the management of their property, as circumstances may require. That where infants are taken from the custody of the father by a court of chancery, and have no property of their own, the father being bound for their support, may be required by order of court to contribute to their maintenance, the court itself, or through a master, inquiring into his condition and circumstances.

In *McCord* v. *Ochiltree*, 8 Blackf. 15, it was said that the necessity for the existence of a power to the protection of minors, was obvious, and would be implied from a general legislative or constitutional grant of chancery powers.

In *Maguire* v. *Maguire*, 7 Dana 181, the court, incidentally remarked, that the protection of infants from brutal treatment by their parents, formed a part of the original jurisdiction of chancery, and as such might be exercised in this country as well as in England.

In the *State* v. *Stigall*, 2 Zabriskie's Rep. 286, the court cited and relied upon 2 Story's Equity, sect. 1341, quoted above, as sustaining the same proposition.

There are many cases cited in Leading Cases in Equity, White & Tudor, vol. 2, part 2, 4 Am. ed., by J. I. Clark Hare, p. 1847, sustaining the same proposition.

By statute, Gantt's Dig., sect. 3036, the probate court may appoint a guardian for a minor, where the parents are adjudged incompetent or unfit for the duties of guardian; but this does not interfere with the jurisdiction of a court of chancery to take from the control of the father, the natural guardian, an abused and ill-treated infant, and make it the ward of court by placing it in the custody and care of some competent and humane person, to be appointed by the court.

The bill or petition, in this case, whatever it may be called, discloses a tale of horror, shocking to humanity, and no doubt, presented a subject-matter within the jurisdiction of the court below, sitting in chambers. See *Bowles* v. *Dixon*, 32 Ark. 96.

On what particular ground the court sustained the demurrer to the bill does not appear, and appellees are not represented by counsel here.

If the court was of the opinion that the bill was improperly brought in the name of the State, instead of in the name of the abused infant, by some person as its next friend, which is no doubt the usual and better practice, the bill, for such informality, should not have been dismissed. Mr. Little and Mr. Sanders were no doubt prompted by motives of humanity in bringing the matter before the court, and might, on suggestion of the court, have assumed, by an amendment of the bill, the attitude of its next friend, or one of them might have done so, or if both had declined, any other suitable person might have been substituted.

At the time the demurrer was sustained the court not only had jurisdiction of the subject-matter brought to its notice by the bill, but of the defendants who had entered their appearance, and the child had been placed in the custody of a person to take care of it, pending the suit, and until the further order of the court.

To dismiss the bill for mere mistake in making the state a formal plaintiff, on demurrer, without inquiry into the truth of the grave charges made against the parents of the child, and permit it again to be restored to them by the interlocutory custodian, was an error for which the decree of dismissal must be reversed and the cause remanded for further proceedings.